

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

02 MAY 21 AM 9:47

IN RE: CERTAIN ASSETS OF § NO. 6:02CV223  
ALLEN PETTY, JR., a.k.a. AL PETTY § (Judge Ward)

**MOTION FOR LIMITED DISCLOSURE OF  
DOCUMENTS UNDER SEAL**

COMES NOW, the United States of America, by and through the United States Attorney for the Eastern District of Texas and the undersigned Assistant United States Attorney, and moves this Court to permit limited disclosure of documents related to the above captioned case. In support of this ex parte motion, the United States would show the Court the following:

I.

The Federal Bureau of Investigation (FBI) is currently involved in an investigation concerning allegations of mail fraud and wire fraud in violation of 18 U.S.C. §§ 1341 and 1343 and money laundering in violation of 18 U.S.C. §§ 1956 and 1957 occurring in the Eastern District of Texas and elsewhere and is assisting this office in presenting evidence to the United States Grand Jury for the Eastern District of Texas. The investigation concerns a possible Ponzi scheme involving telemarketing. In conjunction with the investigation, the grand jury issued subpoenas *duces tecum* for bank records from financial institutions and other entities. Additionally, cooperative witnesses have been providing information to the government relating to the investigation.

On April 4, 2002, the Government sought temporary restraint of certain assets belonging to or under the control of Allen Petty, Jr., a.k.a. Al Petty (Petty), the target of the investigation. The affidavit of Special Agent James A. Hersley, attached to the Motion for the Entry of a Pre-Indictment Temporary Restraining Order (TRO) and incorporated by reference therein, set forth

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probable cause to believe that Petty had been perpetuating a Ponzi scheme in the Eastern District of Texas, in furtherance of which he used the United States mails and interstate wires. Likewise, the affidavit set forth probable cause that Petty has conducted financial transactions designed to conceal the ownership of the proceeds of the scheme or that involved funds from the scheme in excess of \$10,000. As set forth in the motion and affidavit, the plan marketed by Petty may violate the mail fraud and wire fraud statutes, 18 U.S.C. §§ 1341 and 1343, and the transfers involving the proceeds thereof may violate the federal money laundering statutes, 18 U.S.C. §§ 1956 and 1957. Thus, the United States sought to restrain the assets pending federal investigation of Petty based upon indications that the assets were forfeitable pursuant to 18 U.S.C. § 982(a)(1) and (8).

The Government's motion for entry of a TRO was granted, and the TRO was entered on April 4, 2002. The entities affected by the TRO were served on April 4, 2002. Petty was served at the offices of counsel, Robert W. Lee, in Tyler, Texas, on April 5, 2002. The order granting the TRO set the matter for hearing at 8:30 a.m. on April 11, 2002, at the United States Courthouse in Marshall, Texas. The motion and affidavit were not sealed. Following entry of the TRO, Petty and his supporters disseminated the motion and the affidavit and engaged in intense, public speculation regarding the identity of individuals cooperating with the government. This resulted in the misidentification of potential cooperative witnesses, who Petty referred to as Judases in a nationwide conference call. In the conference call, Petty encouraged a supporter to recite a poem that concluded with the fervent wish that the alleged cooperative witnesses "go straight to hell."

On April 9, 2002, the government filed a motion to convert the TRO to a preliminary injunction (PI). The Court heard the matter on April 11, 2002, and granted the motion to convert on April 17, 2002.

On May 20, 2002, the government sought temporary restraint of additional assets related to the scheme under investigation. The Motion for Entry of Pre-Indictment TRO and the attached affidavit in support thereof were sealed upon motion of the government. The government moved to seal the motion and affidavit in this instance because the affidavit contained information that would result in the identification of cooperative witnesses and because the affidavit contained allegations based upon information obtained by subpoenas issued by the United States Grand Jury for the Eastern District of Texas. The government now moves the Court for limited disclosure of the motion for TRO and affidavit.

## II.

Although TROs are typically civil remedies, the protective order in this case is issued pursuant to 18 U.S.C. § 982(b)(1), which incorporates the procedural provisions of 21 U.S.C. § 853(e)(2). These are criminal statutes, and a TRO entered pursuant to these statutes is essentially criminal in nature even though it is assigned a civil case number. Because of its unavoidable relation to a criminal investigation, disclosure of certain information supporting entry of the TRO could compromise the criminal investigation.

Irrespective of the potential effects on the investigation, the government recognizes that the defendant and his counsel need access to the information contained in the motion and affidavit in order to adequately prepare for the hearing on this matter. Therefore, the government requests that Petty and his counsel be granted access to the motion for TRO and attached affidavit.

However, in order to protect the ongoing investigation, particularly the cooperative witnesses and grand jury information, the government requests that Petty and his counsel not be permitted to disseminate motion, affidavit, or the information contained therein, except to the extent that it is necessary to prepare for the hearing on this matter. The limited nature of the disclosure should maintain the integrity of the criminal investigation while allowing Petty sufficient information to evaluate and challenge probable cause. Moreover, this should avert potential harassment of cooperative witnesses and protect grand jury information.

III.

WHEREFORE, the United States moves the Court to authorize the release of the motion for TRO and attached affidavit to counsel for Petty for the limited purpose of preparing for the hearing on this matter. The United States further moves that Petty and his counsel be instructed to not distribute or disseminate the motion, affidavit, or information contained therein.

Respectfully submitted,

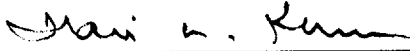
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### **CERTIFICATE OF SERVICE**

On this 21st day of May, 2002, I, Traci L. Kenner, Assistant United States Attorney for the Eastern District of Texas, attorney of record for the United States of America, do certify that a true and correct copy of the foregoing was mailed from Tyler, Texas to: Mr. Robert W. Lee, Attorney at Law, 121 S. Broadway, # 668, Tyler, Texas 75702, and was sent by facsimile transmission to Mr. Lee at (903) 526-7436.

  
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Traci L. Kenner